

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC HEARING

Phoenix, Arizona
December 14, 2005
9:30 a.m.

(Copy)

Reported By:

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Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION, convened at 9:30 a.m. on Decemebr
3 14, 2005, at the State of Arizona, Clean Elections
4 Commission, 1616 W. Adams, Conference Room, Phoenix,
5 Arizona, in the presence of the following Board members:

6 Ms. Marcia Busching, Phoenix, Chairperson

7 Mr. Gary Scaramazzo, Page (Teleconference)

8 Ms. Ermila Jolley, Yuma (Teleconference)

9 Ms. Kathleen Detrick, Tucson

10
11 OTHERS PRESENT:

12 Mr. Todd Lang, Executive Director

13 Ms. Paula Ortiz, Executive Assistant

14 Ms. Colleen McGee, Fiscal Service Manager

15 Ms. Genevra Richardson, Campaign Finance
Manager

16 Mr. Michael Becker, Voter Education Manager

17 Ms. Christina Murphy, Administrative Assistant
III

18 Ms. Diana Varela, Assistant Attorney General

19 Ms. Jan Brewer, Secretary of State

20 Ms. Nancy Read, Secretary of State's Office

21 Ms. Barbara Lubin, Clean Elections Institute

22 Mr. Doug Ramsey, Clean Elections Institute

23 Ms. Jahna Berry, Arizona Republic

24 Mr. Richard Mays, Citizen

25 Mr. Eric Peterson, Quarles & Brady

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P R O C E E D I N G

CHAIRPERSON BUSCHING: I will call this meeting to order. I'm Marcia Busching, Chairman of the Citizens Clean Election Commission. It's 9:30 on Wednesday, December 14th, 2005 at 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

I want to give notice that pursuant to ARS 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Election Commission and the general public that the Citizens Clean Election Commission will hold a regular meeting open to the public today, and we may vote to go into executive session, which will not be open to the public, for any item listed on the agenda for obtaining legal advice.

All matters on the agenda may be discussed, considered and are subject to action by the Commission.

I've already called the meeting to order. I'll note for the record that Commissioner Bardorf is not able to attend today and Commissioner Jolley and Commissioner Scaramazzo are appearing by telephone with Commissioner Detrick and Commissioner Busching present.

The second item on the agenda is the approval of the November 18th, 2005 Commission meeting minutes. Are there additions or corrections?

1 COMMISSIONER DETRICK: Madame Chair.

2 CHAIRPERSON BUSCHING: Commissioner Detrick.

3 COMMISSIONER DETRICK: I have a couple of what
4 I think may be corrections. On page one, or page two I
5 guess, the Proceedings page. On line four, I think
6 probably you said the Clean Elections Commission meeting
7 that you called in to order "at" 1616 instead of "it's"
8 1616.

9 On line four. Next page.

10 CHAIRPERSON BUSCHING: Oh, yes. Page three.

11 COMMISSIONER DETRICK: And -- oh, I see the
12 pages are up above. I dog-eared them so I can't see the
13 pages. And then on page five, line seven should be, "I
14 met with the League of Women voters." Not apostrophe
15 "s".

16 CHAIRPERSON BUSCHING: Okay.

17 COMMISSIONER DETRICK: And there was one back
18 on page 67 that I'm just not sure I understand on the --
19 around lines 12, and 13, and 14 where Todd says, "But I
20 do not intend to have this go around." I don't know if
21 that's -- I don't know if Todd said, "I don't intend to
22 have this happen this go around." Does the sentence
23 make sense to you, Todd?

24 MR. LANG: Which page are you on?

25 COMMISSIONER DETRICK: Page 67, I'm at line 12,

1 13, and 14.

2 CHAIRPERSON BUSCHING: I think it was probably
3 any after the word have.

4 COMMISSIONER DETRICK: Yeah, "Have any of this
5 go around."

6 MR. LANG: Right.

7 COMMISSIONER DETRICK: Just to make the
8 sentence make sense. And that's all I have.

9 CHAIRPERSON BUSCHING: I had mentioned changes
10 previously to the staff on pages 64, 70, and 71.

11 Should -- Mr. Lang, should I go through those
12 again or have they already been noted?

13 MR. LANG: Actually, it will be helpful to go
14 through them again.

15 CHAIRPERSON BUSCHING: Okay. On page 64 I
16 think in line seven it should be "in" rather than "if".
17 On page 70, line five, it should be probably "ex-party
18 issues" rather than "ex-particulates." And page 71, on
19 line 11, it should be "best" rather than "bet".

20 Are there other additions or corrections? If
21 not, the Chair will entertain a motion.

22 COMMISSIONER DETRICK: Madame Chair.

23 CHAIRPERSON BUSCHING: Madame -- Commissioner
24 Detrick.

25 COMMISSIONER DETRICK: I move that we approve

1 the minutes from the November 18th Commission meeting
2 with the amendments noted.

3 COMMISSIONER SCARAMAZZO: I'll second that.

4 CHAIRPERSON BUSCHING: It's been moved by
5 Commissioner Detrick and seconded by Commissioner
6 Scaramazzo that we approve the November 18th, 2005
7 minutes with the corrections as indicated.

8 The Chair will call for the question, all in
9 favor say "aye."

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Opposed, nay?

12 The Chair votes aye. The motion carries.

13 COMMISSIONER SCARAMAZZO: I just like to thank
14 everyone on our own version of war and peace.

15 CHAIRPERSON BUSCHING: Indeed. You'll have a
16 chance to talk about that more later.

17 Executive Director's report, agenda item
18 three.

19 MR. LANG: Thank you, Madame Chair,
20 Commissioners. You have your report there.

21 The big addition I want to make to the report,
22 or embellishment I guess it will be, is on my third
23 announcement which is regarding the COGEL Conference.
24 As you know, I attended that last week with Chair
25 Busching and Commissioner Jolley and it was great and

1 very informative and worth every minute there.

2 I got to meet a lot of folks in other states
3 and got a lot of good ideas from the folks in Maine and
4 some of the other states and so it was very useful. As
5 you know, there's public finance programs in New Jersey,
6 Connecticut, and North Carolina which is judicial only.
7 There are long-standing public finance programs which
8 are different than our program in states like Minnesota
9 and Kansas where they agree to just give you matching
10 funds if you restrict your expenditures. And they also
11 have local programs, and I'm not going to discuss Tucson
12 for a minute because we have our expert here.

13 There's also programs in Portland, Albuquerque,
14 New York City and San Francisco and they are similar to
15 our program actually. With Christina's help we
16 researched and looked into them, and I can tell you a
17 little bit about them if you're interested. That's up
18 to the Chair.

19 CHAIRPERSON BUSCHING: Yeah.

20 MR. LANG: First of all, Oregon has a cool
21 program where you get a tax credit for contributions up
22 to a hundred dollars, which is kind of nice, to
23 encourage everyone to participate. That's just a
24 general provision at any rate.

25 Portland has a campaign finance fund, which is

1 a voluntary fund for their auditors, city commissioners,
2 and mayor elections. You can raise seed money of a
3 hundred dollars per person per donor up to \$15,000. And
4 then you have to gather at least five, \$1,000
5 contributions to qualify for the program. If you
6 succeed, you receive \$150,000 for the race and get
7 another \$150,000 in matching funds. So that's a neat
8 program in Portland.

9 Albuquerque has the public funding program for
10 the mayoral and city council campaign. Candidates have
11 to gather \$5 donations from one percent of the
12 registered voters in their district to qualify. Then
13 there is a \$450,000 fund, and depending on the number of
14 candidates, they all get a piece of that. But generally
15 you get from the fund a dollar from every registered
16 voter in the district to use to run for public office.

17 In Tucson -- we have our expert here, but my
18 understanding is you get up to \$39,000 in matching
19 funds. Is that --

20 COMMISSIONER DETRICK: Based upon voter
21 registration and CPI. This year it was.

22 MR. LANG: Okay. And then the spending limits
23 are \$79,000 in general or does that vary upon --

24 COMMISSIONER DETRICK: It's all dependent on
25 voter registration and CPI. There's no real limit as to

1 how much we give you. We just give you 50 percent of
2 whatever the expenditure limit is.

3 MR. LANG: Gotcha.

4 In New York City they have matching
5 funds. For every dollar you receive from a contributor,
6 they'll match \$4. So, if you get -- up to \$250 per
7 contributor. So, if someone's getting \$250, the city
8 gives you a thousand. You have to adhere to strict
9 spending limits in return.

10 And it's a neat program and it's comprehensive.
11 The problem is it has completely subverted this last
12 election cycle because a wealthy individual spent
13 millions and millions and millions of dollars and won.
14 That was Mr. Bloomberg. But it's a neat program that
15 will work when you don't have super wealthy individuals.

16 In San Francisco you receive \$43,000 for the
17 general and \$17,000 for any runoff. It's for the Board
18 of Supervisors, which is their governing board. To
19 qualify you have to raise at least \$5,000 from 75
20 residents -- at least 75 residents in the amount of \$10
21 to \$100 per resident and there's a spending limit.

22 So, they're all sort of similar to the way our
23 program and the Maine program works. It's neat that
24 it's spreading on the local level.

25 And in New Jersey, they're very excited about

1 their program and eager to try it again. As you will
2 recall, it was a good program the problem was their
3 thresholds to qualify were way too high. You needed
4 several thousands of those \$10 contributions and it was
5 just too difficult and only two people qualified. So,
6 they're eager to get started again and have asked all of
7 us here for help and advice. And of course, all of here
8 at -- staff here at Clean Elections Commission have been
9 doing that.

10 I guess that's all I said about it. You heard
11 lots about BICRA, about the federal standards for
12 electionary communications, and at the various sessions
13 it was well worthwhile. And unless you have questions,
14 I'll move on.

15 Reminder. Tomorrow night on Channel 8 is the
16 debate. I think it's tomorrow night, December 15th.
17 The Clean Elections' debate that I mentioned last month.
18 It's tomorrow so be sure to tune into that.

19 And as you know, we're actively assisting the
20 Secretary of State in her recruitment of a new
21 Commission member, so we're encouraging folks to apply
22 to her office.

23 Staffing. The big news is, as you know,
24 Christina Murphy is already on board. She's right here.
25 Christina, hi. And she's doing a great job. But we

1 also have the great -- the big news is we have our other
2 position now filled, our Administrative Assistant II
3 position is now filled. Cindy Stutesman?

4 MS. ORTIZ: Stutesman.

5 MR. LANG: Stutesman. Starts on January 2nd.
6 So, we're very pleased to have Cindy and I know Paula is
7 giddy.

8 And, really, that concludes my report unless
9 you have questions.

10 CHAIRPERSON BUSCHING: Any questions of Mr.
11 Lang?

12 Okay. We'll move on to agenda item four.
13 Discussion and possible action on the following
14 enforcement matters: A) MUR 04-0030, Jesse Hernandez.
15 Discussion and possible action on payment plan for
16 settlement agreement. Mr. Lang?

17 MR. LANG: Thank you, Madame Chair. As you
18 will recall, Mr. Hernandez entered into a settlement
19 with the Commission in which he agreed to repay
20 \$1,109.66. And he had difficulty making those payments
21 and preferred an installment plan. And because the
22 Commission did not approve an installment plan, I bring
23 it before you today for your consideration and possible
24 approval of the installment plan you see there in
25 paragraph three.

1 The good news is he's paid in full. And, so,
2 it's sort of a moot point, but I'd suggest that approval
3 by the Commission would be useful and worthwhile.

4 CHAIRPERSON BUSCHING: Okay. Any questions of
5 Mr. Lang?

6 Any member of the public wish to speak to this
7 matter?

8 I'll just note for the record that the
9 bankruptcy provisions -- although I'm not practicing
10 bankruptcy law anymore and it's radically changed as of
11 October -- I still think that they could use some
12 bankruptcy expertise to draft them in the future.

13 MR. LANG: Fortunately. He's paid, so --

14 CHAIRPERSON BUSCHING: It's a moot point.

15 MR. LANG: Thank you for that suggestion.

16 CHAIRPERSON BUSCHING: Any discussion among the
17 Commissioners?

18 If not, the Chair will entertain a
19 motion.

20 COMMISSIONER DETRICK: Madame Chair.

21 CHAIRPERSON BUSCHING: Commission Detrick.

22 COMMISSIONER DETRICK: I move that we accept
23 the agreement regarding final payment in MUR 04-0030.

24 CHAIRPERSON BUSCHING: Thank you. Is there a
25 second?

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1 COMMISSIONER JOLLEY: I'll second that.

2 COMMISSIONER SCARAMAZZO: I'll second that --
3 go ahead.

4 CHAIRPERSON BUSCHING: It's been moved by
5 Commissioner Detrick and seconded by Commissioner Jolley
6 that we accept the agreement regarding final payment in
7 the matter of Jesse Hernandez. Any further discussion?

8 If not, the Chair will call for the question,
9 all in favor say "aye."

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Opposed, nay?

12 Chair votes aye. Motion carries.

13 COMMISSIONER DETRICK: Madame Chair, I'd also
14 like to note that we appreciate Mr. Hernandez paying so
15 promptly once he agreed to the final payment plan.
16 That's nice.

17 MR. LANG: Ahead of schedule.

18 COMMISSIONER DETRICK: Ahead of schedule is
19 always nice too.

20 CHAIRPERSON BUSCHING: I second that. Thank
21 you.

22 Go on to agenda item four B) MUR 04-0043, Peggy
23 Tommey Hammann. Discussion and possible action on
24 proposed settlement agreement as a result of informal
25 settlement conference between Commissioner

1 Representative Gary Scaramazzo and Peggy Tommey Hammann.

2 Mr. Scaramazzo.

3 COMMISSIONER SCARAMAZZO: Yes. We met, myself
4 and Ms. Hammann and Diana, a couple of weeks ago down in
5 Phoenix and that was a mutual spot that worked for all
6 of us. And we kind of played Let's Make a Deal for a
7 while and we came to an agreement with Ms. Hammann. And
8 it's very difficult because she's unemployed and en
9 route right now between different locales. So, it was
10 very difficult finding a permanent residence or
11 addresses for her and that caused part of the problem.

12 So we had a lengthy discussion and what we
13 eventually came up with was that it would be in
14 everyone's best interest, including Clean Elections, to
15 get this resolved and move on. So, with that in mind,
16 we made an offer for settlement and Ms. Hammann
17 countered based on abilities to pay as an unemployed
18 person.

19 And that's where we came up with the admission
20 of \$1,000 fine which would be paid in three monthly
21 installments in \$400, \$300, and \$300 beginning in
22 January. And that would then remove this from the
23 pending cases there at Clean Elections and we can move
24 onto something else.

25 That's it in a nutshell.

1 CHAIRPERSON BUSCHING: Thank you, Mr.
2 Scaramazzo. Is there anyone from the public that wishes
3 to speak to this matter?

4 Okay. Any discussion among the Commission
5 members?

6 COMMISSIONER JOLLEY: Chairperson Busching, I
7 have a question of Commissioner Scaramazzo.

8 CHAIRPERSON BUSCHING: Yes.

9 COMMISSIONER JOLLEY: So, now if she fails to
10 pay, I guess there's a penalty there?

11 COMMISSIONER SCARAMAZZO: Yes. Then the
12 charges will be re-instated and Diana has outlined that
13 in the agreement.

14 COMMISSIONER JOLLEY: Okay. That's what I'm
15 reading. Thank you.

16 COMMISSIONER SCARAMAZZO: Certainly.

17 CHAIRPERSON BUSCHING: Commissioner Scaramazzo,
18 did you look at the settlement in the context of other
19 penalties and settlements, and do you have any idea
20 where this -- this fits in? Are you --

21 COMMISSIONER SCARAMAZZO: I think it fits in
22 with the infractions that occurred and the potential
23 fines that could have been levied. I think in the final
24 analysis it was a fair settlement and it fit right in
25 with what other settlements have taken place.

1 CHAIRPERSON BUSCHING: And did you look to any
2 other settlements in particular or --

3 COMMISSIONER SCARAMAZZO: I left that up to
4 Diana to help me out with that.

5 CHAIRPERSON BUSCHING: Diana, can you help me
6 out with that?

7 MS. VARELA: I did not look at any others.

8 COMMISSIONER SCARAMAZZO: I don't mean to put
9 Diana on the spot.

10 MS. VARELA: I don't remember that request and
11 I did not look at any other agreements.

12 CHAIRPERSON BUSCHING: Okay. I'm concerned
13 about having somebody -- I mean, this is a situation
14 where we have somebody exceeding their spending limit.
15 Of course we have one infamous case where somebody
16 exceeded their spending limit and we have another case
17 during this past year where somebody exceeded their
18 spending limit. And in both of those cases, we did not
19 reduce their penalty at all. And I think in one case we
20 let people -- we let the person pay over time, or has he
21 paid?

22 MS. VARELA: I don't know what you're talking
23 about.

24 CHAIRPERSON BUSCHING: Mr. Murchison.

25 MS. VARELA: I don't know. It comes to the

Commission, so I don't know.

CHAIRPERSON BUSCHING: Okay. But I'm concerned that this, in this case she -- the Respondent would pay less than a third of what's owed. And I'm afraid that even despite the fact that she's unemployed, it would set a very bad precedent and be used as an example of singling somebody out for favorable treatment. And I'm concerned about that.

COMMISSIONER DETRICK: Madame Chair, how much did she exceed the limit by?

I mean, it wasn't -- was it -- if it's just a couple hundred dollars that she actually exceeded the limit. I mean, I know we assessed the penalty, but --

CHAIRPERSON BUSCHING: I don't recall. Mr. Lang, do you know?

COMMISSIONER DETRICK: Do we have somebody who can tell us?

CHAIRPERSON BUSCHING: Ms. Richardson?

MS. VARELA: On the front page it says --

COMMISSIONER DETRICK: Under Item C?

MS. VARELA: Right.

COMMISSIONER DETRICK: So she exceeded it by \$200 or \$202?

CHAIRPERSON BUSCHING: Do we know that "D" is the result of "C"?

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1 Ms. Richardson, can you help us on this?

2 MS. RICHARDSON: I'm sorry, I don't have a copy
3 of the settlement agreement in front of me. But she had
4 bounced two checks. One for \$152 and one for \$50, and
5 incurred insufficient funds fees from her bank because
6 of those. So I have to go back and look at the file if
7 you want an exact amount.

8 COMMISSIONER DETRICK: That's the extent of the
9 violation; is that correct?

10 MS. RICHARDSON: That's part of it. There were
11 a couple of other things in there that were part of her
12 violations.

13 MR. LANG: Filing fee and Secretary of State.

14 COMMISSIONER DETRICK: Right. And that was she
15 used campaign funds instead of personal funds to do
16 that.

17 MR. LANG: That's correct.

18 MS. RICHARDSON: I think she didn't report the
19 matching funds either, so there were three.

20 MS. VARELA: That's right.

21 COMMISSIONER DETRICK: Gary?

22 COMMISSIONER SCARAMAZZO: Yes.

23 COMMISSIONER DETRICK: Madame Chair, can I ask
24 a couple questions?

25 CHAIRPERSON BUSCHING: Sure.

1 COMMISSIONER DETRICK: When I look at this,
2 that overexpenditure to me looks fairly small and I can
3 understand how that can happen. Gary, can you tell me,
4 when you discussed that she didn't report receipt of
5 funds in the amount of \$528.34, what did she -- how did
6 she respond to that about why she didn't report the
7 funds?

8 Did you talk to her at all about that?

9 COMMISSIONER SCARAMAZZO: Calling back on the
10 memory bank here.

11 Diana, do you remember whether we --

12 MS. VARELA: My recollection is that she
13 claimed that she did file reports with the Secretary of
14 State's office.

15 COMMISSIONER SCARAMAZZO: That's right.

16 MS. VARELA: But what -- and Nancy Read can
17 probably better speak to what happened on the Secretary
18 of State's end. But what Ms. Hammann told us is she
19 filed reports with the Secretary of State. She thought
20 that she had filed them, but what appeared on the
21 Secretary of State's end were blanks. Nancy Read tells
22 me when you file a report, you don't get blanks.

23 The other thing is that because her campaign
24 finance report is late and this is a Secretary of State
25 issue, she needs to pay in order for the Secretary of

1 State to accept the filing at this point. She also
2 needs to pay a penalty. So, until she pays that, the
3 Secretary of State will not accept the filing.

4 What she told us during our conference was that
5 she was going to take care of that. I don't know if she
6 has. I don't know if she still plans to, but that's
7 what she told us.

8 COMMISSIONER SCARAMAZZO: She was supposed to
9 take care of that in November.

10 COMMISSIONER DETRICK: Okay. Madame Chair.

11 CHAIRPERSON BUSCHING: Commissioner Detrick.

12 COMMISSIONER DETRICK: You know, I really do
13 understand your concern about setting a precedent, but I
14 really think this entire case has been very -- a kind of
15 strange one where we couldn't contact her. She's
16 obviously not employed. I'm not certain she understood
17 the seriousness, although she should have, and I
18 certainly appreciate that.

19 But I do think that to me it seems like -- like
20 I think this is a reasonable settlement in this case
21 because I believe the overexpenditure is actually fairly
22 small. And her -- this issue of not being able to
23 report until you pay penalties, I deal with that myself,
24 so I do understand how that can happen. And I'm in
25 support of Gary's settlement agreement here.

CHAIRPERSON BUSCHING: Okay. Any further discussion or any questions of anyone?

If not, the Chair will entertain a motion.

COMMISSIONER DETRICK: Madame Chair.

CHAIRPERSON BUSCHING: Commissioner Detrick.

COMMISSIONER DETRICK: I move that we accept the settlement agreement in MUR 04-0043.

CHAIRPERSON BUSCHING: Is there a second?

COMMISSIONER SCARAMAZZO: I'll second that.

CHAIRPERSON BUSCHING: It's been moved by Commissioner Detrick and seconded by Commissioner Scaramazzo that we accept the settlement agreement in MUR 04-0043, Peggy Tommey Hammann.

All in favor say "aye."

(Chorus of ayes.)

CHAIRPERSON BUSCHING: Opposed, nay?

Chair votes nay. The motion carries.

COMMISSIONER SCARAMAZZO: Thank you.

CHAIRPERSON BUSCHING: The next item is item four C) MUR 04-0080, Edward Ableser.

MR. LANG: Ab-les-ser, as I understand it.

CHAIRPERSON BUSCHING: Ableser. Reason to believe recommendation, possible action on settlement agreement.

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1 Mr. Lang.

2 MR. LANG: Thank you, Madame Chair,
3 Commissioners. This was an internally generated
4 complaint that we began last week after it came to our
5 attention there was some accounting issues with Mr.
6 Ableser's campaign finance reports. What it boils down
7 to was four reimbursement checks he issued to what I
8 would term "enthusiastic campaign workers". In all four
9 cases they involved reimbursement for expenditures on
10 behalf of the campaign and all occurred within a few
11 days of the expenditure.

12 In the first case, Ms. Shari Casteel purchased
13 food and drink supplies on January 14th on behalf of the
14 campaign and she was reimbursed on 1/19. The problem
15 there was that she spent \$111.24. And as you'll recall
16 for seed money, the personal income contribution limit
17 is \$110. So even though she was reimbursed, technically
18 for that five-day period, she exceeded that limit by
19 \$1.24. And this is a technical violation of the law.

20 The second case, Respondent's stepfather and
21 mother bought a little over 2,000 blue tassels for the
22 campaign handout they were working on and spent \$534.
23 That expenditure occurred on March 12th and they were
24 reimbursed by the campaign 13 days later on March 25th.
25 Again, we have the problem that even though this was

1 done on behalf of the campaign, we have a problem
2 because the personal money limit was exceeded by virtue
3 of this because, of course, they were his parents, and
4 of course they had already maxed out the personal
5 contribution limit like most parents do and so you have
6 a violation. And because they're family members, he
7 violated the personal money limit and violated their
8 individual contribution limit, and he had maxed out on
9 seed money. So violated the aggregate contribution
10 limit for that thirteen-day period.

11 The next expenditure at issue occurred when
12 \$517 were spent on November 1st by Mr. Ableser's father
13 for food and drinks for a volunteer party and it was
14 repaid the next day. So, for that one-day period we
15 have similar violations of the various limits for one
16 day.

17 And then the fourth reimbursement was for
18 expenditures that occurred on October 30th, October 31st
19 and November 1st. This was to Jack and Monica Shaw, his
20 mother and stepfather -- or is that -- I may be getting
21 the -- yeah, stepfather and mother. That reimbursement
22 occurred on September 2nd. So, again we have an
23 immediate reimbursement.

24 The bottom line problem is we do have the
25 violation and that's why you have the reason-to-believe

1 finding by me and then you also see we entered into a
2 proposed settlement. I met with Mr. Ableser and his
3 attorney, and Genevra Richardson met with him. They
4 acknowledged the violations. They were very persuasive
5 and explained the situation, how there was no intent to
6 violate and you see the mitigating circumstances listed
7 there.

8 You have the usual ones: No intent to violate,
9 done in good faith, they attended the training. But the
10 key issue for me here is that all times we checked -- at
11 all times relevant here, he had the money in his
12 campaign to make these expenditures. So there was
13 absolutely no game playing, no financial advantage
14 gained, there was no trickery, no attempt to subvert the
15 system to get money earlier or later, or, you know, no
16 financial advantage.

17 Basically what we have here is sloppy
18 bookkeeping and lack of control over some enthusiastic
19 campaign workers. They're used to letting mom and dad
20 tell you what to do and I think in this case it was a
21 mistake. That's why you see the recommended settlement.
22 Basically what we did was worked out the violations and,
23 you know, because they exceeded by about \$2,200, the
24 possible penalty in this case is \$22,770.90 under
25 16-942(B). As you recall, it's 10 times the amount they

1 exceed.

2 Generally in a case like this where there's
3 absolutely no harm, I recommend -- and I've done this in
4 the past when I was Assistant A.G. -- recommend they
5 fine by the amount they exceeded, which in this case it
6 was would be \$2,200. In this case I recommend we only
7 fine them \$1,566. The difference is I took out the
8 reimbursements that occurred on the very same day as the
9 expenditure because there was absolutely no harm, no
10 foul in my opinion. \$1,566 fine is appropriate because
11 that represents the reimbursements that did not occur on
12 the very same day, they occurred between one day later
13 and 13 days later.

14 So that's my recommendation.

15 CHAIRPERSON BUSCHING: Okay. Thank you. Are
16 there questions of Mr. Lang?

17 Mr. Lang, I have a question. As we head into
18 this next year of new election, obviously, you know, we
19 talked last time about campaign violations and
20 priorities and everything. Would you regard this
21 situation as equal in seriousness as the last matter
22 that we just discussed?

23 MR. LANG: Peggy Tommey Hammann?

24 CHAIRPERSON BUSCHING: Yeah.

25 MR. LANG: No. I would say the Hammann matter

1 was more serious. Because in this case -- in the
2 Hammann matter we had complete failures to report, we
3 had absolutely improper use of money, that sort of
4 thing.

5 Here we had the person who had the money to
6 make the expenditures but allowed family members and
7 friends to make the expenditures instead, which
8 constituted technical violations but gained no financial
9 advantage. So I consider this less serious.

10 On the other hand, it does involve the issue of
11 when do you report expenditures and that's very
12 important and that's why I think a fine is appropriate,
13 even though there's no intent and no financial advantage
14 gained. Because the expenditures needed to be reported
15 on the very day it occurred and that didn't always
16 occur.

17 In terms of the trigger report and the
18 deadlines, they were fined because we were -- you know,
19 there were no late reports. But they should have been
20 reimbursed on the very day they occurred.

21 CHAIRPERSON BUSCHING: But the maximum time
22 period in between the expenditure and the reporting is
23 four days?

24 MR. LANG: 13 days.

25 CHAIRPERSON BUSCHING: Oh, 13 days.

1 MR. LANG: The reimbursement.

2 CHAIRPERSON BUSCHING: And the amount involved
3 there was how much?

4 MR. LANG: Let's see, that was the March 25th
5 expenditure I believe. Yeah. So that was \$534 for
6 tassels.

7 CHAIRPERSON BUSCHING: March 25th being six --

8 MR. LANG: The date of reimbursement.

9 CHAIRPERSON BUSCHING: -- six months before the
10 primary?

11 MR. LANG: Yeah. There's an argument these are
12 all just nominal violations. That argument could be
13 made. But, again, because the issue of campaign staff
14 making expenditures on behalf of the campaign and when
15 that's reported, I think is an important issue and
16 that's why I recommended that we do it, impose a fine.

17 CHAIRPERSON BUSCHING: Okay. Other questions
18 for Mr. Lang?

19 COMMISSIONER DETRICK: Madame Chair.

20 CHAIRPERSON BUSCHING: Commission Detrick.

21 COMMISSIONER DETRICK: Just a comment. I think
22 this is an area of the law which I felt really needed to
23 have something done. There's nothing in the law that
24 says that you have to report immediately, but there are
25 times when you are doing this kind of thing that you can

1 understand.

2 MR. LANG: Oh, yeah.

3 COMMISSIONER DETRICK: It's on the weekend, a
4 couple days go by, left my receipt at home. It's kind
5 of a messy area.

6 MR. LANG: I can see many campaigns making
7 these sorts of mistakes.

8 COMMISSIONER DETRICK: Although 13 days is a
9 little bit long.

10 CHAIRPERSON BUSCHING: Let me ask, is there any
11 member in the public that wishes to speak to this
12 matter? No.

13 Okay. Any other questions or comments by the
14 Commissioners?

15 All right. If not, the Chair will entertain a
16 motion.

17 COMMISSIONER JOLLEY: Chairperson Busching.

18 CHAIRPERSON BUSCHING: Commissioner Jolley.

19 COMMISSIONER JOLLEY: I would move that we in
20 the matter of Edward Ableser, case number MUR 04-0080,
21 that the settlement agreement be approved and that the
22 Respondent agrees to pay the Commission within 30 days
23 of the settlement agreement in the amount of \$1,566.03.

24 CHAIRPERSON BUSCHING: Is there a second?

25 COMMISSIONER SCARAMAZZO: Second.

1 CHAIRPERSON BUSCHING: It's been moved by
2 Commissioner Jolley and seconded by Commissioner
3 Scaramazzo that the settlement agreement be approved.

4 Mr. Lang.

5 MR. LANG: Thank you, Madame Chair. If I may,
6 I would like to suggest that the Commission consider
7 approving the statement of reasons along with the
8 settlement.

9 CHAIRPERSON BUSCHING: Okay. Commissioner
10 Jolley, are you willing to amend your motion?

11 COMMISSIONER JOLLEY: Yes. I will amend my
12 motion.

13 COMMISSIONER SCARAMAZZO: That's fine with the
14 second.

15 CHAIRPERSON BUSCHING: Okay. The motion and
16 the second have been agreed to amend to include the
17 motion to approve the statement of reasons set forth by
18 the Executive Director. Any further discussions?

19 If not, the Chair will call for the question,
20 all in favor say "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON BUSCHING: Opposed, nay?

23 Chair votes aye. Motion carries.

24 Move to item five on the agenda. Discussion
25 and possible action on the 2006 state legislative

1 signature requirements pursuant to R2-20-106(A)(1)(a),
2 applications for funding submitted before March 1st.

3 Mr. Lang.

4 MR. LANG: Thank you, Madame Chair. You have
5 before you have a chart of agenda item five which was
6 prepared by Colleen McGee based on information provided
7 by the Secretary of State's office. And this indicates
8 the signature requirements that we need to calculate
9 based on our rule, Rule 106. And we ask the Commission
10 approve it.

11 CHAIRPERSON BUSCHING: Mr. Lang, would you go
12 into a little bit more detail on my -- I was confused as
13 to why the March 1st cutoff date.

14 MR. LANG: Because after March 1st the
15 Secretary of State will have the new numbers based on
16 the new voter registration counts. And until that time,
17 the problem we have is that between January 1st and
18 March 1st, folks can turn in their request for public
19 funding, but we don't know whether they've qualified as
20 a candidate until after March 1st because we don't have
21 the new voters registration numbers. So, our rule
22 requires us to make this calculation so we can determine
23 if they're qualified candidates based on the old
24 numbers.

25 Is that --

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1 MS. MCGEE: That's correct.

2 CHAIRPERSON BUSCHING: Thank you.

3 All right. Any member of the public wish
4 to speak to this matter?

5 Okay. Any questions or comments by
6 Commissioners?

7 Mr. Lang.

8 MR. LANG: Madame Chair, I would point out to
9 the Commission that it's quite likely we'll have
10 candidates requesting public funding before March 1st.
11 This isn't just an exercise.

12 CHAIRPERSON BUSCHING: Okay. Any other
13 questions or comments?

14 If not, the Chair will entertain a
15 motion.

16 COMMISSIONER DETRICK: Madame Chair.

17 CHAIRPERSON BUSCHING: Commissioner Detrick.

18 COMMISSIONER DETRICK: I move that we accept
19 the signature requirements presented today for
20 applications for funding submitted before March 1st.

21 CHAIRPERSON BUSCHING: Is there a second?

22 COMMISSIONER JOLLEY: I will second that.

23 COMMISSIONER SCARAMAZZO: Second -- go ahead,
24 Commissioner.

25 CHAIRPERSON BUSCHING: It's been moved by

1 Commissioner Detrick -- and I heard you first Mr.
2 Scaramazzo, so I'll accept your second.

3 COMMISSIONER SCARAMAZZO: Okay.

4 CHAIRPERSON BUSCHING: -- that we approve the
5 signature requirements as submitted by staff for
6 application for funding submitted before March 1st. Any
7 further discussion?

8 If not, the Chair will call for the question,
9 all in favor say "aye."

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Chair votes aye. Motion
12 carries.

13 Next item on the agenda is item six, discussion
14 and possible action on maintaining a court reporter for
15 future public meetings.

16 Mr. Lang.

17 MR. LANG: Madame Chair, thank you. The issue
18 here is whether or not the Commission would like to
19 continue to use a professional court reporter for the
20 meetings. It's on the agenda because a couple of the
21 Commissioners have expressed their appreciation for the
22 full detailed reports. And so we thought it appropriate
23 to put it on the agenda for your discussion and
24 consideration.

25 The reporter costs about \$735 a month, so

1 that's basically a meeting, and we believe she provides
2 a great benefit, frees up our staff, and especially when
3 we get public records request for minutes and that kind
4 of thing. So we find it beneficial but it's something
5 for you to consider.

6 CHAIRPERSON BUSCHING: Could you tell us, have
7 you done a survey of other agencies and what's being
8 done in that regard?

9 MS. ORTIZ: I have. I contacted the Department
10 of Liquor License and they have Commission board members
11 and Arizona Redistricting also uses a court reporter.
12 Based on the subject matters and what's discussed, it's
13 easier for the public record's request and they're
14 wanting verbatim, sometimes a summary doesn't capture
15 key things. And it saves staff time tremendously. We
16 save hundreds of dollars of staff time. Sometimes our
17 own attorney will ask to have a section transcribed, and
18 when the press calls we have to go and run to make a
19 tape and that's reformatted and get transcribed again.
20 The bottom line is transcription is requested more often
21 than not.

22 CHAIRPERSON BUSCHING: Okay. And is there any
23 way, I mean, the -- the transcripts that we're getting
24 right now are pretty hefty. If there's one thing I
25 recommend, if we get them in the future, if we reduce

1 them down to four on the page like we typically do for
2 depositions?

3 MS. ORTIZ: Certainly.

4 CHAIRPERSON BUSCHING: If you want to do it.

5 MS. ORTIZ: We can request a condensed version.

6 CHAIRPERSON BUSCHING: Condensed meaning?

7 MS. ORTIZ: It's condensed where the font size
8 is smaller and four per page.

9 CHAIRPERSON BUSCHING: That's fine. And the
10 other question that I had was if a public record's
11 request is made, do they make it or do they receive it
12 in a searchable fashion or does somebody have to take
13 and go through it page by page looking for the part that
14 they're looking for?

15 MS. ORTIZ: Whatever method. Usually it's
16 posted on our Website anyways, so the actual -- once the
17 Commission approves the final minutes, it's going to be
18 on the Website anyways. That reduces a huge amount of
19 public records request. But if it's a certain section,
20 they can come in and view it. The public always has the
21 right to come in and view the public document and select
22 the pages they want. And the fees they pay are based on
23 the page count.

24 CHAIRPERSON BUSCHING: Mr. Lang.

25 MR. LANG: Are you talking on the old system?

1 CHAIRPERSON BUSCHING: Under -- under this
2 system, under using a court reporter.

3 MR. LANG: Oh, yeah.

4 CHAIRPERSON BUSCHING: My question is, can a
5 person ask for it in, like, word form or, you know,
6 other -- in a form such that they have it on a disk so
7 that they can then take it and search it for, you know,
8 somebody's name for example?

9 MS. ORTIZ: We can place it on disk. They
10 would pay the cost of the disk, absolutely. Or it's on
11 our Website also eventually. But most reporters want it
12 within three days after the public meeting, which we do
13 get and we're required to release the public record.
14 It's still draft until the Commission approves it.

15 CHAIRPERSON BUSCHING: Okay. All right. Other
16 questions for Mr. Lang or Ms. Ortiz?

17 Any discussion?

18 Okay. The Chair will entertain a motion.

19 COMMISSIONER JOLLEY: Madame Chair, this is
20 Commissioner Jolley.

21 CHAIRPERSON BUSCHING: Commissioner Jolley.

22 COMMISSIONER JOLLEY: Yes. I would move we
23 accept and take action on maintaining a court reporter
24 for future public meetings as previously mentioned.

25 CHAIRPERSON BUSCHING: Is there a second?

1 COMMISSIONER DETRICK: Second.

2 CHAIRPERSON BUSCHING: It's been moved by
3 Commissioner Jolley and seconded by Commissioner Detrick
4 that we maintain a court reporter for future public
5 meetings. Further discussion?

6 If not, the Chair will call for the question,
7 all in favor say "aye."

8 (Chorus of ayes.)

9 CHAIRPERSON BUSCHING: Opposed, nay?

10 Chair votes aye. Motion carries.

11 Okay. Next item is agenda item seven.
12 Discussion and possible action on Substantive Policy
13 Statement No. 13, use of privately owned airplanes;
14 motor vehicles; accommodations.

15 Mr. Lang.

16 MR. LANG: Thank you, Madame Chair,
17 Commissioners. This is up primarily for your
18 information and discussion and for your consideration
19 over the next few weeks for a possible reconsideration
20 in the January meeting. We're not ready today to make a
21 final proposal for any possible changes.

22 The reason I brought this up before you is I've
23 heard from all sides, both parties, and various
24 different offices both statewide and legislative with
25 various concerns regarding this rule. Basically the

1 argument they have asserted is that the rule doesn't
2 work for them. In particular the requirement that if
3 you have a flight that has both public purpose for --
4 obviously that would be for an incumbent, and election
5 purposes, the entire stop has to be attributed to a
6 campaign stop.

7 I've also heard a number of concerns regarding
8 the volunteer use of airplanes and private use of
9 airplanes. And in fact, we received a fairly -- a
10 fairly substantial proposal from one of the statewide
11 candidates this morning which would substantially change
12 this rule.

13 So, I do not have a recommended course of
14 action at this time because we still -- I still need to
15 hear back from a number of folks, but I wanted to bring
16 it up and let you know that that issue was out there for
17 that consideration.

18 CHAIRPERSON BUSCHING: Okay. And what are the
19 alternatives that they suggested or you're considering?

20 MR. LANG: They go all over -- they go all over
21 the map. They range from getting rid of the substantive
22 policy statement and allowing our normal reporting
23 requirements to apply, to this morning's requirement
24 would be that -- and I'm speaking very generally, but
25 the bottom line is for commercial pilots and commercial

1 flight you would use certain rates, but for a private
2 pilots who cannot charge for their work on behalf of a
3 campaign, they'd like that their time to not be counted
4 and simply the airplane rental to be counted.

5 And go so far to have a proposal, for instance,
6 if a private pilot flies a big banner "Vote For Lang,"
7 that should not be any charge because it's akin to
8 having a bumper sticker on your car. I happen to
9 disagree with that analogy, but those are the sorts of
10 proposals.

11 And the proposals are very helpful and
12 certainly appreciated, but we need time for other folks
13 to take a look at them and consider them. There are
14 disagreements within parties as well. It's not simply
15 the Democrats want it one way and the Republicans want
16 another. Both parties are coming up with different
17 ideas depending on which office they're interested in.

18 CHAIRPERSON BUSCHING: Is there anyone from the
19 public that wishes to address this matter?

20 Sir, come up here and state your name, please.

21 MR. MAYS: Madame Chair and Commissioners. My
22 name is Richard Mays. I'm private pilot and private
23 airplane owner. I'm here to request you make major
24 changes or eliminate, as you suggested, Substantive
25 Policy 13 on three grounds.

1 First, the existing policy is incongruent to
2 the other policies regarding market value that this
3 Commission has previously decided. Secondly, the policy
4 violates, if not the purpose than the spirit, of the
5 taxpayer funded campaign. And lastly, because the
6 policy is at odds with Federal Aviation Regulations
7 which license private pilots like myself.

8 Regarding the market value. I was here four
9 years regarding the complaint with below-market rent in
10 downtown office buildings. The Commission ruled the
11 market value was the amount the parties agreed was a
12 fair value for the purpose. Why? I'm not really sure I
13 understand the logic behind that decision.

14 It is the precedence for this Commission's
15 determination of market value in the service; however,
16 in this one area the Commission has inserted a specific
17 determination as to the market value of travel by
18 airplane. By creating a standard market value based on
19 commercial charter costs. The policy is eliminating the
20 majority of candidates from utilizing aviation as a
21 viable method of traveling; this appears to me to tilt
22 the balance away from those who are not incumbents.

23 I would like to read the following section from
24 the Clean Election Act. "Section 16-940, finding and
25 declaration. The people of Arizona declare our intent

1 to create a clean election system that will improve the
2 integrity of the Arizona State Government but
3 diminishing the influence of special-interest money,
4 will encourage citizen participation in the political
5 process, and promote freedom of speech" -- dot, dot,
6 dot.

7 "B) The people of Arizona and their findings
8 find that our current election finance system gives
9 incumbents an unhealthy advantage and hinders
10 communication to voters by many qualified candidates."

11 This Policy 13 does not encourage citizen
12 participation in the political process because it
13 eliminates private pilots like myself from
14 participating. It does hinder communication to voters
15 by many qualified candidates and gives the incumbent an
16 unhealthy advantage over challengers.

17 Many non-incumbent candidates only travel over
18 wide areas of the state for the purpose of campaign
19 whereas an incumbent can always find an official reason
20 for travel. That kind of disputes what you just said.
21 I guess you guys have ruled differently, I don't know.

22 My third concern though is by far my greatest.
23 Federal Aviation Regulations do not permit me as a
24 private pilot to accept the type of compensation that
25 this policy requires. As a private pilot I have

1 licensed restrictions imposed by the Federal Aviation
2 Regulations. These regulations grant specific
3 privileges and limitations on private parties in what we
4 are permitted to do.

5 Substantive Policy 13 regarding private pilots
6 does not coincide with federal regulation. I believe
7 it's 14CFR. As a pilot, we refer to it as "FARS",
8 Federal Aviation Regulations.

9 Section 16 -- Section 61-113 of the FARS does
10 not permit me as a private pilot to receive any
11 compensation for carrying passengers or property. The
12 FAA does not want private pilots to make a profit by
13 using their license. This policy statement, however,
14 requires that a campaign compensate me in ways not
15 permitted by the FARS.

16 If you were to consider my acting in a campaign
17 as a volunteer a form of employment, then Section 61-113
18 does have provisions to provide for it and they are
19 this: "61-113(B), a private pilot may for compensation
20 or hire, act as pilot in command of an aircraft in
21 connection with any business or employment."

22 So, let's say as a volunteer I was a volunteer
23 coordinator for a campaign. I wasn't taking any
24 employment money, but the rules are this, the flight is
25 only incidental to that business or employment. So, if

1 I'm going to fly from Phoenix here to Page, your
2 Substantive Policy does not allow me to do that but the
3 FARS do. It would only be incidental to that position
4 within the campaign.

5 "The aircraft does not carry passengers or
6 property for compensation or hire." I can't be charging
7 the kind of money that you're demanding that I charge as
8 a pilot. And then, "The private pilot may not pay less
9 than the pro rata share of the operating expenses of the
10 flight with passengers, provided the expenses only
11 involve fuel, oil, airport expenditures or rental fees."

12 Therefore, the only expenses which a campaign
13 is allowed to reimburse me are the cost of fuel, oil and
14 airport expenditure, which would be an overnight tie
15 down, that type of fee an airport charges.

16 With my situation where I am the owner, there
17 are no rental fees. Further as the pilot, I must pay my
18 own share of those expenses and cannot receive them from
19 the campaign. If it costs me \$100 to fly my airplane to
20 Page and I've got a four-person airplane and I've got
21 three people in that airplane, I can only charge the
22 campaign according to Federal Aviation Regulations \$75
23 because I must pay for my own seat.

24 A policy by this Commission which does not
25 adhere to the Federal Aviation Regulations does

1 eliminate private pilots from being able to participate
2 in state campaigns. This makes no sense. If as a
3 private citizen I were to give a ride to a candidate in
4 my Ford 150 from Phoenix airport to Yuma airport, this
5 policy statement in paragraph B requires I be reimbursed
6 at 10 cents per mile or \$18.90. That will not cover the
7 cost of fuel.

8 But as a private pilot I cannot provide the
9 same volunteer service without violating Federal
10 Aviation Regulations even though the Federal Aviation
11 Regulations do allow me to carry the candidate and be
12 reimbursed for the costs associated with the flight. If
13 I were to give the same example, it would be about 1.3
14 hours in my airplane to go to Yuma. If we took the
15 hundred dollars an hour, which is about what it costs me
16 to operate the plane in fuel and oil, I could charge the
17 candidate \$130 less my one-quarter share of that. Or if
18 there were two of us, I could charge the campaign \$65,
19 half of \$130.

20 I request you change your policy to allow
21 private pilots to participate in campaign without
22 violating the Federal Aviation Regulations by
23 eliminating these erroneous market value regulations as
24 they relate to private pilots. Thank you.

25 CHAIRPERSON BUSCHING: Thank you, Mr. Mays. If

1 you'll wait a second, I'll see if anyone has any
2 questions of Mr. Mays.

3 So, Mr. Mays, if I were to understand what
4 you're saying is that you would like us to eliminate the
5 current policy and instead institute a policy that would
6 reimburse you on an hourly rate or reimburse any
7 airplane operator on an hourly rate.

8 MR. MAYS: From my reading of your Substantive
9 Policy 13, you've only looked at pilots as a commercial
10 entity and you've gone to charter services and said
11 here's what it costs to fly around the state for a
12 charter service. Now, if I was a charter airplane
13 owner, I would be under what's called either Part 121 or
14 Part 135 of the Federal Aviation Regulations. Those
15 regulations allow me to charge for that service, whether
16 it be a small charter company with a five- or
17 six-passenger airplane to an airline. That's what
18 governs them.

19 But there's a separate section for private
20 pilots, and that Section is 61 or Section 91. Those
21 parts say that because I have a license as a private
22 pilot, I can travel around the state as a private pilot
23 and I can take any one of you with me. If I was a
24 student pilot, I wouldn't be able to do that. But what
25 I cannot do is I cannot charge you for that. I cannot

1 make it a commercial service.

2 So, if you look at this from a standpoint of me
3 being a private pilot involved with a campaign, let's
4 say I was the volunteer coordinator and I was going to
5 go up and do an event in Flagstaff, your rules right now
6 say I have to charge somewhere in the neighborhood of
7 \$2,400 just for me to fly up there as part of the
8 campaign.

9 But I'm a private pilot. I have the right to
10 get in my plane and use that for my personal travel any
11 way that I want. And if I happen to carry someone with
12 me, if the candidate or candidate staff were to go with
13 me, the Federal Aviation Regulations say you can't make
14 me charge for it. I'm not allowed to charge them
15 because then I would be a Part 121 or Part 135 pilot. A
16 private pilot who owns their own airplane can't charge
17 for rental. Unless they want to put it under a rental,
18 I mean, the cost of my insurance would probably go up to
19 about \$15,000 a month.

20 My major point is that this policy has
21 completely eliminated and I mean I've called the
22 Commission and said: Can I volunteer? And I get this
23 Substantive Policy in return. And it absolutely
24 eliminates because of the Federal Aviation Regulations
25 my ability to fly for any purpose in the campaign.

1 CHAIRPERSON BUSCHING: Okay. And so that I
2 understand, it would be your recommendation that you be
3 allowed to volunteer and operate your plane for free for
4 a candidate to go around this state, or you should be --
5 a candidate should be reimbursing you for your expenses
6 or some hourly rate? Or what -- that's where I got
7 lost.

8 MR. MAYS: It cannot be an hourly rate because
9 the Federal Aviation Regulations require I only be
10 compensated the pro rata share not, including my seat,
11 of fuel, oil, and airport expenditure, and rental of the
12 airplane. I own the airplane, so I cannot receive
13 compensation for rental.

14 CHAIRPERSON BUSCHING: Okay.

15 MR. MAYS: Okay. But if the fuel costs me \$100
16 and there are four people in the plane, then the
17 campaign can reimburse me \$75. But the reality is,
18 without -- I think that with your question, it depends
19 on if we're on the other side of town. If we're in Mesa
20 and I've got a vehicle available, and myself and the
21 candidate and the campaign manager were to hop into my
22 vehicle and drive from Mesa to Phoenix, what does the
23 Commission do with that? My reading of this says that
24 the campaign has to reimburse me 10 cents per mile if I
25 drive my personal vehicle.

1 CHAIRPERSON BUSCHING: Okay.

2 MR. MAYS: Now, if that's correct, then it's a
3 similar -- I mean, if you want to force us to take the
4 -- take the compensation because you don't want
5 campaigns receiving a free ride, as long as it's for the
6 cost of my fuel and airport expenditures, and it
7 complies with the Federal Aviation Regulations, I don't
8 really have a problem with that. But as a private
9 pilot, you're -- you're eliminating me from being able
10 to participate if you make me charge a commercial rate
11 for the aircraft or for the use of aircraft. And I
12 should have the right, as a private citizen who has his
13 own airplane, to be able to fly and have that happen in
14 conjunction with a campaign.

15 CHAIRPERSON BUSCHING: Okay. Just one
16 follow-up question and that is, if the candidate does
17 charter an airplane, do you have any problem with the
18 rates that are set forth in this?

19 MR. MAYS: Well, I'm not in the charter
20 business and I think that that -- I mean, it is a -- it
21 is a completely different animal if you are talking
22 about a charter service.

23 CHAIRPERSON BUSCHING: Okay.

24 MR. MAYS: If you are talking about a company
25 that is out there, Mesa Air or any of the others that

1 have a charter service, there's several out of
2 Scottsdale, I personally believe they should be -- they
3 should have to pay the same price as if you were a
4 businessman walking in off the street.

5 I don't think that this Substantive Policy
6 covers the potential flights that are available. For
7 one, you only look at six, not seven- and nine-seater
8 aircrafts. I mean, there are -- there are -- there are
9 nine-seat turbo props, there are nine-seat leer jets,
10 and they cost different amounts. So, I think you should
11 just look at -- if it's a charter company, they should
12 have a published list of what those charges are and the
13 campaign should probably have to pay that.

14 I'm here talking about being a private pilot
15 with a private pilot's license. There should be nothing
16 that prevents the candidate from getting in my plane as
17 they shouldn't be restricted from getting in my car.

18 But, I'm not a taxicab service. If I was a cab
19 service with a private car, then I would have a license
20 that says I have to charge so much money to be a taxicab
21 driver. Okay? If it's \$3.38 per eighth of an mile,
22 then the campaign should have to reimburse them.

23 But you don't want to -- you don't want people
24 starting their own private cab companies out there
25 without going through licensing. And the FAA doesn't

1 want private pilots out there flying people around
2 charging this kind of money, or really what this
3 effectively does is eliminates the ability. Because I
4 don't know anyone who who's going to pay me \$2,406 plus
5 \$45 an hour to fly from Phoenix to Kingman in my little
6 putt-putt airplane.

7 CHAIRPERSON BUSCHING: Okay. Thank you.

8 Any other questions of Mr. Mays?

9 All right. Thank you, Mr. Mays.

10 MR. MAYS: Can I give you a copy of the Federal
11 Aviation Regulation that I printed out? That's the one
12 that deals with privileges of what private pilot are
13 allowed to use.

14 CHAIRPERSON BUSCHING: Thank you for taking the
15 time to come today.

16 MR. MAYS: Thank you.

17 CHAIRPERSON BUSCHING: Are there any other
18 members of the public that wish to speak to this matter?

19 MS. BREWER: Thank you, Madam Chairman and
20 members of the Commission. I'm Jan Brewer, candidate
21 for Secretary of State. I've come today to address this
22 issue that you have on your table before you. And I'm
23 certainly not an expert, so I will just speak to you as
24 a candidate.

25 I have some great concerns because we all know

1 that Clean Elections was established to make it a level
2 playing field. And for some candidates or incumbents,
3 we don't have the ability of having friends that have
4 airplanes and are able to donate or volunteer their time
5 or energies. This rule has been on the statute on your
6 rules since the inception of Clean Elections and I
7 assume that it also has been cleared by the Department
8 of Justice. And up until this point in time, I have not
9 seen any really complaints in regards to it.

10 The gentleman that spoke before me stated that,
11 you know, we were kind of -- ruling with the way that
12 you have, it is -- we're kind of suppressing his right
13 as a private plane owner and operator. Well, you know,
14 with elections we have suppressed a lot of people's
15 private rights as far as donating what kind of money
16 they can give, the way they can do independent
17 expenditures. I mean, that's all been controlled
18 because of elections, and it's all been approved
19 obviously by the Department of Justice.

20 My concern, again, is that Clean Elections is
21 based fundamentally on leveling the playing field. And,
22 here we go, if somebody has a friend that has a nice
23 plane -- and God bless them, I wish I had a few of those
24 people, I don't happen to have any of those people --
25 and I know that opponents out there just might have

1 airplanes and jets, et cetera, et cetera. And, you
2 know, they can use it to their great advantage because
3 it is a large state. I've traveled it from north to
4 south, east to west.

5 And my God, I would have liked to have been in
6 a plane too coming from Sierra Vista to Lake Havasu in
7 one day. But, unfortunately, I don't have the
8 accessibility nor did I have the money given to me under
9 Clean Election to do that in my election.

10 Now, I know two years ago, four years ago,
11 three years ago, there were people traveling in
12 airplanes. I don't know whatever came out of that. I
13 don't know how -- I know that the candidates of maybe
14 the higher office, the Governor's office they have a lot
15 more money than we have to operate.

16 But if you change the rule, it doesn't just
17 affect the people that are getting the large sums of
18 money to run, you're affecting the Office of Secretary
19 of State, Treasurer, Superintendent of Instruction --
20 who am I forgetting here -- Corporation Commission. But
21 we don't get the large sums of dollars.

22 So, if you change that law for a specific
23 office because they have the dollars and you leave us
24 with the same law, then those people that are opposing,
25 or running, or have that ability to access their friends

1 or their family members, it puts us at a huge
2 disadvantage. Unless I don't quite understand it.

3 I just -- and I know it's a terrible situation
4 because everybody feels that their rights are being
5 trampled on, you know. It's their plane, they ought to
6 be able to take whom they want on it. But the rule
7 there is the rule and it's been in effect, and I don't
8 know how you're going to solve it, but I thought it was
9 incumbent that I come today and tell you from a
10 candidate's point of view how it's going to affect us.

11 If you break that rule, it's going to really
12 put us that don't have the ability to have access to a
13 private plane -- I wish I did. If I did, maybe I
14 wouldn't be here, but I don't. And I used to own a
15 plane, so I kind of understand a little bit about it.
16 But I have no friends -- I'll plead with you, I have no
17 friends, I have no planes, I have nothing, so you must,
18 in your wisdom, do the very best job you can to there
19 again get back to the old saying, level the playing
20 field.

21 And I thank you. And I would answer any
22 questions, if you don't make them tough.

23 CHAIRPERSON BUSCHING: Secretary of State
24 Brewer I have a question and that is, is it your
25 recommendation that we maintain the current policy?

1 MS. BREWER: You know, if that's level, then
2 yeah, you know. I don't know what your solution is. I
3 know, like I said previously, within your wisdom, I know
4 that you will try to address these issues. But the fact
5 of the matter is, it's going to have to be a level
6 playing field.

7 And when I the gentleman said -- I'm so sorry,
8 I don't remember your name.

9 MR. MAYS: It's Richard Mays.

10 MS. BREWER: Mr. Mays is saying that it was in
11 opposition or was not possible by dealing with the FAA
12 rules and regulations. Well, election law sometimes
13 doesn't always agree with everybody else's election
14 [sic] that's why they go to the Department of Justice
15 and they get cleared; and that's my understanding and
16 your attorneys will know better than I how that is
17 addressed.

18 And the thing I will be asking because I'm here
19 as a candidate, and all I want is it's tough enough to
20 run elections and tough enough to do it on the money we
21 got and try to compete with everybody, but it has got to
22 be fair and it has got to be level and can't be somebody
23 in such an extreme advantage over those of us that are
24 burning up our tires and driving for eight and nine
25 hours a day and get there in an hour and a half.

1 It's exactly what Mr. Lang said, it's an issue
2 being discussed on both sides of the aisle for all
3 different incumbents and otherwise. It's just a
4 situation, but you haven't had a problem in the past.

5 CHAIRPERSON BUSCHING: Thank you. Is there
6 questions of Secretary of State Brewer -- Candidate
7 Brewer?

8 MS. BREWER: I'll put my hat on here -- don't
9 put that down.

10 CHAIRPERSON BUSCHING: All right. Any members
11 -- other members of the public wish to speak?

12 MR. MAYS: Can I make a follow-up?

13 CHAIRPERSON BUSCHING: Mr. Mays, you may.

14 MR. MAYS: Secretary of State Brewer, as a
15 fellow Republican, I'll always give you a ride in my
16 airplane.

17 MS. BREWER: Put that in the record.

18 MR. MAYS: I want to address what you said
19 though. You said you want to make this a fair playing
20 field. I want to go back to 16-940 which says that the
21 people of Arizona -- which is the governing law of this,
22 the people of Arizona find that our current election
23 finance system hinders communication to voters by many
24 qualified candidates. I don't think having access to a
25 private plane does anything to hinder communication, it

1 will actually help it.

2 I don't understand your logic in let's set the
3 bar so high that nobody can fly because you don't have a
4 friend that's a pilot. You do have a friend that's a
5 pilot, I supported you before. And that's my whole
6 purpose of being here is that I'd like to be able to fly
7 you as a candidate from one side of town to the -- you
8 know, one side of the state to the other. But I don't
9 have the ability to do it because of this law.

10 I thought public financing was supposed to make
11 all these things easier as long as everyone was playing
12 by the same rules. I don't think your way is playing by
13 the same rules. That's just my personal opinion.

14 CHAIRPERSON BUSCHING: Thank you, Mr. Mays.
15 Any other questions of Mr. Mays?

16 MS. BREWER: I'll just turn this now into kind
17 of a debate, Madame Chairman.

18 CHAIRPERSON BUSCHING: Ms. Brewer.

19 MS. BREWER: I appreciate Mr. Mays' offer of
20 driving me. I ran a campaign four years ago and I
21 assure you, Madame Chairman and the Board, no one ever
22 volunteered to fly me anywhere or take me anywhere in
23 order to get me better access to communicate my message
24 to the constituents out there.

25 I understand there's an issue there and it's

1 the issue that we've discussed on many of the rules that
2 have been established that we have infringed upon what
3 we believe are private privileges that are no longer
4 available there. But, I cannot sit here in front of you
5 -- and I hope that you don't allow someone to have that
6 kind of an advantage over someone that doesn't have the
7 accessibility to have a private pilot and a plane.

8 I mean, we know that the candidates out there
9 that are running that are using airplanes have got more
10 money and they have the accessibility to do this. And
11 they got that because they are running for very
12 important offices. But we have other officers that this
13 is going to infringe upon, but they don't get the kind
14 of dollars. When you're talking about a \$1.2 million
15 budget for a campaign as opposed to my \$120,000, I mean
16 and you give away the airplane, I'm at a terrible,
17 tremendous lost.

18 CHAIRPERSON BUSCHING: Thank you. Any other --
19 no.

20 MR. MAYS: Okay.

21 CHAIRPERSON BUSCHING: Anyone else who has not
22 spoken wish to speak?

23 If not, any Commissioners want to have any
24 discussion, or questions, or anything today?

25 COMMISSIONER SCARAMAZZO: I just know that I

1 wouldn't be ready as a commissioner to act on this to
2 make any motion or to vote on anything concerning this.

3 CHAIRPERSON BUSCHING: Well, I agree with that,
4 Mr. Scaramazzo, so have no fear I'm in the same can.

5 COMMISSIONER SCARAMAZZO: Okay.

6 CHAIRPERSON BUSCHING: Any other discussion
7 today?

8 If not, we'll move on to agenda item eight,
9 discussion and possible action on Commission's 2006
10 calendar-year budget.

11 Ms. McGee.

12 MS. MCGEE: Mr. Lang is going to present it.

13 MR. LANG: Actually, go ahead.

14 MS. MCGEE: You want me to do it?

15 MR. LANG: I'm happy to do it, but Ms. McGee
16 did all the work.

17 MS. MCGEE: That's fine. Commissioners, I'm
18 here today to present our 2006 calendar-year budget.
19 I'd like to start off, first of all, with your projected
20 year.

21 As you know, for -- the Commission has to
22 establish projected revenue over a four-year period.
23 First of all to determine our expenditure cap. And the
24 expenditure cap applies to our administrative and
25 enforcement budget and gets us to where we have to spend

1 no more than 10 percent of our budget, and voter
2 education where we have to spend at least 10 percent of
3 our cap on voter education. Now, the cap does not apply
4 to our candidate funding. We can spend as much money as
5 we have in our fund for candidate funding.

6 So, the first page in our budget presentation
7 is our 2006 expenditure cap and revenue projection. And
8 for 2006, we're projecting that we're going to receive
9 \$14.9 million dollars. That will give us a cap of
10 spending of \$12.3 million. So, again, for our
11 administration and enforcement we cannot spend more than
12 10 percent of the 12.3, and we have to spend at least 10
13 percent of the 12.3 on voter education. And further in
14 the presentation we'll get into that in detail.

15 The next page that we have for you is just our
16 forecasting calculation, how we come up with how much
17 revenue we're forecasting to receive during the next
18 four years.

19 The next page is just a breakdown of our
20 projected revenue of the fines-in that we receive.
21 We're predicting that we're going to receive \$8.4
22 million dollars. Other revenue that is projected is our
23 \$5 tax check-off, which is \$5.9 million. And our
24 candidate qualifying contributions, we're anticipating
25 \$400,000.

1 The next page in the presentation is just an
2 overall of our expenditures for 2006. And we're
3 forecasting that we're going to be spending \$6.8 million
4 and that's for everything, that's for administration of
5 our candidate funding and voter education.

6 CHAIRPERSON BUSCHING: You meant to say 26.8?

7 MS. MCGEE: I'm sorry, yes. \$26.8 million.

8 The next page is our breakdown of
9 administrative and enforcement expenditures. Again,
10 we're anticipating spending nine percent of the
11 expenditure cap which will equal \$1.1 million.

12 If any of the Commissioners have questions as
13 far as the itemization, I'll be glad to answer those.
14 But basically, as I said, we're going to spend \$1.1
15 million for administrative and enforcement expenditures.

16 Voter education, we're anticipate spending \$4.3
17 million. Now, this include our candidate statement
18 pamphlet which is almost \$3 million and this also
19 includes the \$700,000 that it will take to put all the
20 candidate debates on video so we can have them on our
21 Website.

22 The next page that we have is our projected
23 candidate funding. We're anticipating having 121
24 participating candidates receiving maximum funding.
25 That means that each participating candidate will have a

1 non-participating opponent and will receive full funding
2 and matching funds. And we're anticipating \$21.4
3 million in candidate funding.

4 And that's the end of our 2006 budget. If you
5 have any questions, I'll be glad to answer them.

6 CHAIRPERSON BUSCHING: Okay. Any questions of
7 Ms. McGee?

8 COMMISSIONER JOLLEY: I do.

9 CHAIRPERSON BUSCHING: Commissioner Jolley.

10 COMMISSIONER JOLLEY: Colleen, well, will you
11 go over the fact that you stated that any carryover that
12 we would not have any funds transferred into the general
13 fund?

14 MS. MCGEE: Sure. Yes, Commissioner Jolley.
15 The Act requires us when we project our revenue over a
16 four-year period that the Commission looks at if we're
17 going to have revenue in excess of what's going to be
18 needed, we would give money to the general fund. And
19 normally we would do that in December. We've given the
20 2005 projection back in January of 2005.

21 Our 2006 projection we're projecting that we're
22 going to have \$2.6 million in excess of the cap.
23 However, we're not recommending that we return -- or not
24 return, we give that to the general fund at this time
25 because we might need it to fund our candidates. What

1 we're asking is we wait until the end of 2006 after the
2 election to look at if we have the amount of money left
3 over in the fund to give to the general fund.

4 We don't give it back to the general fund,
5 because it's never given to us from the general fund
6 since we're not an appropriated agency from the
7 legislature. So it's money we actually give to the
8 general fund if we have it left in our fund.

9 COMMISSIONER JOLLEY: Thank you.

10 MS. MCGEE: You're welcome.

11 CHAIRPERSON BUSCHING: Other questions for Ms.
12 McGee?

13 Is there anyone from the public that wishes to
14 speak to this matter?

15 If not, the Chair will entertain a
16 motion.

17 COMMISSIONER JOLLEY: Madame Chair, this is
18 Commissioner Jolley.

19 CHAIRPERSON BUSCHING: Yes.

20 COMMISSIONER JOLLEY: I will move that we
21 accept the 2006 calendar-year budget as proposed.

22 CHAIRPERSON BUSCHING: Okay. Is there a
23 second?

24 COMMISSIONER SCARAMAZZO: Second.

25 CHAIRPERSON BUSCHING: It's been moved by

1 Commissioner Jolley and seconded by Commissioner
2 Scaramazzo that we accept the Commission's 2006
3 calendar-year proposed budget. Any further discussion?

4 The only discussion that I have is that I have
5 a question for Mr. Lang. And that is, does this budget
6 allow any flexibility for additional projects or --

7 MR. LANG: Yes, I think it does. For instance,
8 you'll notice that there are couple of capital
9 expenditures that are unusual this year, a \$50,000
10 expenditure and a \$35,000 expenditure. The budgetary
11 requirement dictated we wouldn't have to engage in those
12 expenditures and do something else with that, but
13 there's a lot of room.

14 If you look at the candidates -- participating
15 candidated projection, if you recall, Colleen told you
16 almost \$21.5 million. But that projects full matching,
17 and that's not likely to occur, but we do anticipate
18 significant matching because of the independent
19 expenditures and the like.

20 It also anticipates three gubernatorial
21 candidates running for participating candidates.
22 Actually we think it will be more. We didn't address
23 that number though because we think it will be less than
24 some of the others when it's all said and done. But we
25 have the flexibility to keep it as it is. That sort of

1 flexibility is built into it throughout the budget.

2 CHAIRPERSON BUSCHING: Okay. Any further
3 questions or discussion?

4 If not, the Chair will call for the question,
5 all in favor say "aye."

6 (Chorus of ayes.)

7 CHAIRPERSON BUSCHING: Opposed, nay?

8 Chair votes aye. Motion carries.

9 MS. MCGEE: Thank you, Commissioners.

10 CHAIRPERSON BUSCHING: Item number nine, report
11 on pending litigation for David Burnell Smith from
12 Assistant Attorney General Diana Varela.

13 MS. VARELA: Yes. Thank you, Madame Chair,
14 Commissioners. Let me take you back a little bit so I
15 can get you to where we are now.

16 After the Commission denied the motion for
17 re-hearing or review on October 4th, subsequent to that,
18 the Attorney General filed a petition for Writ of Quo
19 Warranto asking the Court to remove Mr. Smith from
20 office. We also filed a motion to dismiss the complaint
21 that he had filed in Superior Court prior to the
22 Commission making its decision on his motion for re-
23 hearing or review.

24 Mr. Smith filed a motion to quash the Petition
25 for Writ of Quo Warranto basically saying you need to

1 get rid of this. His -- his complaint was filed in the
2 southeast court. Our petition for Petition of Writ of
3 Quo Warranto was filed here. So, we asked they
4 consolidate it and they were consolidated under the
5 first case number, which is the case number for Mr.
6 Smith's complaint that he had filed on September 26th.
7 So those were consolidated and Judge Mark Aceto in Mesa
8 took all of those matters.

9 A week ago yesterday we had an oral argument
10 and an evidentiary hearing on the Motion to Dismiss the
11 Application For Order to Show Cause and on Mr. Smith's
12 Motion to Quash. We had the oral argument and
13 evidentiary hearing. And the judge said: I'm going to
14 take this under advisement. So we really had no idea
15 when he was going to rule.

16 He issued his ruling the next day, so a week
17 ago today, granting our motion to dismiss and also
18 ordering that Mr. Smith -- bottom line is he ordered
19 that Mr. Smith forfeit his office. Later that same
20 day -- we got that by fax the morning of December 7th.
21 Later that afternoon we had a telephonic conference with
22 Judge Aceto and Mr. Smith had asked for a stay of the
23 Superior Court's order which was granted until December
24 21st, so a week from today.

25 And Mr. Smith yesterday filed a Special Action

1 in the Court of Appeals. He has also filed a Motion For
2 Stay in the Court of Appeals. My understanding from Mr.
3 Abny who called me yesterday, he's trying to get a
4 hearing on the Motion For Stay either tomorrow or
5 Friday.

6 The Court of Appeals issued an order stating
7 that we have to file a response to the Petition For
8 Special Action by a week from Friday on December 23rd
9 and then there will be a hearing on January 11th if the
10 Court decides to accept jurisdiction.

11 So that's where we're at.

12 CHAIRPERSON BUSCHING: And he filed a special
13 action, but is there a right of appeal from the Superior
14 Court decision?

15 MS. VARELA: Yes, there is.

16 CHAIRPERSON BUSCHING: And has there been an
17 appealment filed as well or not?

18 MS. VARELA: No, he's just filed the special
19 action.

20 CHAIRPERSON BUSCHING: Okay. And the special
21 action seeks the same remedies as an appeal would or are
22 they different?

23 MS. VARELA: Well, they're asking -- you know,
24 I don't have it in front of me. He's asking to vacate
25 the order, but he -- he wants to go back sort of to the

1 very beginning and he wants his constitutional issues
2 heard. He wants a jury trial.

3 So, he's also asking for those remedies. So
4 he's asking for relief both procedurally and on the
5 merits of his claim.

6 CHAIRPERSON BUSCHING: Interesting. Okay.
7 Other questions of Ms. Varela? If not, thank you.

8 MS. VARELA: You're welcome. Thank you.

9 CHAIRPERSON BUSCHING: Item ten, call for
10 public comment. This is the time for consideration and
11 discussion of comments and complaints from the public.
12 Action taken as a result of public comment will be
13 limited to directing staff to study the matter or
14 rescheduling the matter for further discussion,
15 consideration, and decision at a later date or
16 responding to criticism.

17 Is there anyone from the public that wishes to
18 speak?

19 I want to make a public comment today. I want
20 to just -- in this holiday season, just want to thank
21 all my Commission members. It's been a wonderful year.
22 They've been very supportive and helpful and have taught
23 me a lot. And I want to thank the staff for the same
24 reason. Staff, and Attorney Generals included, are just
25 great.

1 I think that the reason the Commission works is
2 because of the laws that we have in place and what the
3 voters approved back in 1998. At COGEL we heard one of
4 the speakers talk about elections in Africa and how
5 difficult they were or nonexistent they were because
6 they were not open and free, it was not a democratic
7 process. And it made me sit back and reflect on how
8 many good things that we have and how we really should
9 be appreciative of our democracy in Arizona and what we
10 have here in this state and everybody that we have
11 surrounding us. And with that, I want to say happy
12 holidays to everyone.

13 MS. VARELA: Thank you.

14 MR. LANG: Cheers.

15 COMMISSIONER DETRICK: Thank you.

16 CHAIRPERSON BUSCHING: And item number 11 on
17 the agenda, adjournment. Is there a motion?

18 COMMISSIONER DETRICK: I'll move for
19 adjournment.

20 COMMISSIONER SCARAMAZZO: Second.

21 CHAIRPERSON BUSCHING: It's been moved by
22 Commissioner Detrick and seconded by Commissioner
23 Scaramazzo that we adjourn.

24 All in favor say "aye".

25 (Chorus of ayes.)

CHAIRPERSON BUSCHING: Opposed, nay?

Chair votes aye. Motion carries.

COMMISSIONER SCARAMAZZO: Happy holidays
everyone.

COMMISSIONER JOLLEY: Happy holidays everyone.

* * * * *

C E R T I F I C A T E

I, Angela Furniss Miller, Certified Court
Reporter, do hereby certify that the foregoing pages
numbered 1 through 67, inclusive, constitute a full and
accurate printed record of my stenographic notes taken
at said time and place, all done to the best of my skill
and ability.

DATED, at Phoenix, this 19th day of December,
2005.

Angela Furniss Miller, RPR
Certified Reporter (AZ50127)

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